

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFF SHIRLEY D. SHARPE and all others**  
similarly situated

**(b) County of Residence of First Listed Plaintiff Philadelphia**  
(EXCEPT IN U.S. PLAINTIFF CASES)

**(c) Attorney's (Firm Name, Address, and Telephone Number)** Cary L. Flitter, Esq. and  
Andrew M. Milz, Esq., Flitter Milz, P.C., 450 N. Narberth Avenue, Suite 101, Narberth, PA  
19072, (610) 822-0782

**DEFENDANT MIDLAND CREDIT MANAGEMENT &  
MIDLAND FUNDING, LLC**

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |  |  |                            |                            |
|--|--|----------------------------|----------------------------|
| <b>PTF</b>   | <b>DEF</b>   | <b>PTF</b>                 | <b>DEF</b>                 |
| Citizen of This State <input type="checkbox"/> 1                   | <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State <input type="checkbox"/> 2                | <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 | <input type="checkbox"/> 3 Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened

Transferred from ☐ 5 another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION** Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. § 1692  
Brief description of cause: Fair Debt Collection Practices Act

**VII. REQUESTED IN COMPLAINT:** ☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** \_\_\_\_\_ **CHECK YES only if demanded in complaint**  
**JURY DEMAND:** ☒ Yes ☐ No.

**VIII. RELATED CASE(S) IF ANY** (See instructions): **JUDGE** \_\_\_\_\_ **DOCKET NUMBER** \_\_\_\_\_

**DATE** 11/30/16 **SIGNATURE OF ATTORNEY OF RECORD** 

FOR OFFICE USE ONLY

**RECEIPT #** \_\_\_\_\_ **AMOUNT** \_\_\_\_\_ **APPLYING IFP** \_\_\_\_\_ **JUDGE** \_\_\_\_\_ **MAG. JUDGE** \_\_\_\_\_

## APPENDIX I

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

SHIRLEY D. SHARPE, and all others similarly situated	:	CIVIL ACTION
	:	
V.	:	
	:	NO.
MIDLAND CREDIT MANAGEMENT	:	
& MIDLAND FUNDING, LLC	:	

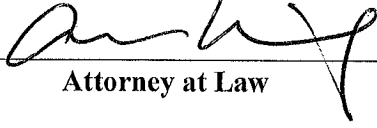
In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. (     )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits (     )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (     )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. (     )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases) (   X  )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (     )

11/30/16  
Date

610-822-0782  
Telephone  
(Civ.660) 10/02

  
Attorney at Law

610-667-0552  
Fax Number

Andrew M. Milz  
Attorney for Plaintiff

amilz@consumerslaw.com  
E-Mail Address

**FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM** to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1122 W. Master Street, Philadelphia, PA 19122

Address of Defendants: 8875 Aero Drive, Suite 200, San Diego, CA 92123

Place of Accident, Incident or Transaction: Philadelphia, PA 19122

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

**A. Federal Question Cases:**

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases

(Please specify) Fair Debt Collection Practices Act, 15 U.S.C. § 1692

**B. Diversity Jurisdiction Cases:**

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability (Asbestos)
9. ☐ All other Diversity Cases  
(Please specify)

**ARBITRATION CERTIFICATION**

(Check appropriate Category)

I, \_\_\_\_\_, counsel of record do hereby certify:  
☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☒ Relief other than monetary damages is sought

DATE: 11/30/16

Attorney-at-Law

207715

Attorney I.D.

**NOTE:** A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 11/30/16

CIV.609 (4/03)

Attorney-at-Law

207715

Attorney I.D.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SHIRLEY D. SHARPE, *and all others*  
*similarly situated*,  
1122 W. Master Street  
Philadelphia, PA 19122,

Plaintiff,

vs.

MIDLAND CREDIT MANAGEMENT  
8875 Aero Drive, Suite 200  
San Diego, CA 92123

and

MIDLAND FUNDING, LLC  
8875 Aero Drive, Suite 200  
San Diego, CA 92123,

Defendants.

CIVIL ACTION

NO.

CLASS ACTION

**COMPLAINT**

**I. INTRODUCTION**

1. This is a consumer class action for damages brought pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692 (“FDCPA”).

2. The FDCPA mandates a Validation Rights Notice in the first written communication to a consumer as an important consumer disclosure and informal dispute mechanism. 15 U.S.C. § 1692g.

3. Defendant debt collectors sent a collection notice to Plaintiff and the class which fails to fully and effectively convey the Validation Notice in violation of the FDCPA.

## **II. JURISDICTION**

4. Jurisdiction arises under the FDCPA, 15 U.S.C. §1692k, and 28 U.S.C. §§1331 and 1337.

5. *In personam* jurisdiction exists and venue is proper, as Defendants do business in this district and Plaintiff is situated in this district.

## **III. PARTIES**

6. Plaintiff Shirley D. Sharpe is a consumer who resides in Philadelphia, Pennsylvania at the address captioned above.

7. Defendant Midland Credit Management (“MCM”) is a nationwide debt collector with a principal place of business at the address captioned.

8. Defendant Midland Funding, LLC (“Midland Funding”) is a purchaser of charged-off consumer debts and has a principal place of business at the address captioned.

9. Defendants MCM and Midland Funding are collectively referred to as “Midland” or “Defendants.”

10. Defendants regularly engage in the collection of consumer debts using the mails and telephone or purchase consumer debt after default for the purposes of collection.

11. Each Defendant is a “debt collector” as that term is contemplated in the FDCPA, 15 U.S.C. § 1692a(6).

12. Midland Funding engaged MCM to collect the accounts here in issue.

13. Midland Funding is responsible for the acts of its collector, MCM.

## **IV. STATEMENT OF CLAIM**

14. On December 2, 2015, Defendant MCM sent Plaintiff a communication in connection with a consumer debt allegedly due Midland Funding, LLC and arising from an old

Capital One Bank (USA), N.A. account. (*See* correspondence from MCM attached hereto as Exhibit “A,” redacted).

15. Section 1692g(a) of the FDCPA requires a debt collector to provide a consumer with a Notice containing information about the alleged debt and a consumer’s rights as more specifically set forth in subsections (a)(1)-(5).

16. This Notice is an important statutory right which must be provided fully and clearly to a consumer.

17. If a consumer disputes a debt, a debt collector such as MCM must cease collection until validating the debt per the consumer’s request.

18. The letter at issue here, Exhibit “A,” demonstrates that to avoid this interruption in its collection activity, MCM has determined to bury or obscure the important Section 1692g Validation Notice to impede a consumer from learning their rights to seek validation.

19. The Validation Notice in the December 2, 2015 collection dun is in no way prominent or conspicuous as required by law, but is rather printed on the reverse side of the letter in ordinary font, confused by MCM’s message (on both sides of the letter) to see the other side for “important” information, dwarfed by larger emphasized messages, obscured by irrelevant copy, and generally *un*-noticeable.

20. The reference on the front of the letter to “SEE REVERSE SIDE FOR IMPORTANT DISCLOSURE INFORMATION” although nominally in capital letters is printed at the bottom, inconspicuously, and overshadowed by other, larger and more prominent messages on the front which are set apart by bold text, indentation, and even boxes, including:

**Your experience with MCM will be different. Period.**

**MCM is a partner you can trust.**

Next steps... you choose:

**Option 1:** Resolve the account and pay only \$666.44  
With this option, SAVE \$59.77 if you pay by 01-16-2018.

**Option 2:** Set up a payment plan that works for you.  
Call (855) 977-1988 and speak to a professional Account Manager to set up a plan.

(Ex. "A" (obverse side)).

21. Should the reader see the pinched message to "SEE REVERSE" amid the clutter on the front of this letter and turn it over, the reader is met with two boxed paragraphs with bold copy, the second of which instructs:

PLEASE SEE REVERSE SIDE FOR IMPORTANT DISCLOSURE INFORMATION

(Ex. "A" (reverse side)).

22. This confusing message directs the reader to return to the front page for the "important disclosure" (which is not there), and directs her away from the truly important and mandated Section 1692g Validation Notice buried on the reverse.

23. The reader is then met with a bold statement about phone calls being recorded, and two more irrelevant paragraphs, before MCM finally presents the important §1692g Validation Notice in ordinary, non-bold, non-boxed, non-capitalized text – a full seven (7) paragraphs into the copy on the reverse page.

24. A snapshot of the reverse of the collection letter reveals how the statutory notice is buried in plain text, while other (lesser or utterly unimportant messages) are emphasized instead:



**Important Disclosure Information:**

Please understand this is a communication from a debt collector. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

**PLEASE SEE REVERSE SIDE FOR IMPORTANT DISCLOSURE INFORMATION**

Calls to and/or from this company may be monitored or recorded.

The records associated with the Capital One Bank (USA), N.A. account purchased by MIDLAND FUNDING LLC, reflect that you are obligated on this account, which is in default.

As the owner of this account, but subject to the rights described below, MIDLAND FUNDING LLC is entitled to payment of this account. All communication regarding this account should be addressed to MCM and not the previous owner.

Unless you notify MCM within thirty (30) days after receiving this notice that you dispute the validity of the debt, or any portion thereof, MCM will assume this debt to be valid.

If you notify MCM, in writing, within thirty (30) days after receiving this notice that the debt, or any portion thereof, is disputed, MCM will obtain verification of the debt or a copy of a judgment (if there is a judgment) and MCM will mail you a copy of such verification or judgment.

If you request, in writing, within thirty (30) days after receiving this notice, MCM will provide you with the name and address of the original creditor.

If an attorney represents you with regard to this debt, please refer this letter to your attorney. Likewise, if you are involved in an active bankruptcy case, or if this debt has been discharged in a bankruptcy case, please refer this letter to your bankruptcy attorney so that we may be notified.

Please remember, even if you make a payment within thirty (30) days after receiving this notice, you still have the remainder of the thirty (30) days to exercise the rights described above.

You are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

**RETAIN THE FOLLOWING ADDRESS INFORMATION FOR YOUR RECORDS:**

(Ex. "A" (reverse side)).

25. Other bold, capitalized, and underlined messages – none as important as the §1692g Notice – follow, further obscuring and burying the mandatory disclosure, as demonstrated below:



You are hereby notified that a negative credit report resulting on your credit records may be submitted by a credit reporting agency if you fail to fulfill the terms of your credit obligations.

**RETAIN THE FOLLOWING ADDRESS INFORMATION FOR YOUR RECORDS:**

Communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to: 2385 Northside Drive, Suite 300, San Diego, CA 92108; Attn: Consumer Support Services.

MAIL PAYMENTS TO: P.O. Box 60578, Los Angeles, CA 90060-0578

MAIL CORRESPONDENCE BUT NO PAYMENTS TO: 2385 Northside Drive, Suite 300, San Diego, CA 92108

MAIL CREDIT REPORTING CORRESPONDENCE TO: MCM CREDIT REPORTING DEPARTMENT, 2385 Northside Drive, Suite 300, San Diego, CA 92108

We are required under state law to notify consumers of the following rights. This list does not contain a complete list of the rights consumers have under state and federal laws.

**IF YOU LIVE IN COLORADO, THIS APPLIES TO YOU:**  
FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE [WWW.COLORADOATTORNEYGENERAL.GOV/CA](http://WWW.COLORADOATTORNEYGENERAL.GOV/CA)

A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt.

Midland Credit Management has a Colorado office with the following address and telephone number: Building B, 80 Garden Center, Suite 3, Broomfield, CO 80020. Telephone number: (303) 820-4763.

Only physical in-person payments may be accepted at this office location. All payments made via mail should be sent to the following address: P.O. Box 60578, Los Angeles, CA 90060-0578

**IF YOU LIVE IN MASSACHUSETTS, THIS APPLIES TO YOU:**

**NOTICE OF IMPORTANT RIGHTS:** You have the right to make a written or oral request that telephone calls regarding your debt not be made to you at your place of employment. Any such oral request will be valid for only ten (10) days unless you provide written confirmation of the request postmarked or delivered within seven (7) days of such request. You may terminate this request by writing to Midland Credit Management, Inc.

**IF YOU LIVE IN MINNESOTA, THIS APPLIES TO YOU:**

This collection agency is licensed by the Minnesota Dept. of Commerce.

(Ex. "A" (reverse side)).

26. None of this bold, underlined, or capitalized copy reflecting statements about other states' laws has any bearing on a collection letter sent to a consumer in Philadelphia, such as Ms. Sharpe. Yet MCM chose to give these irrelevant messages visual prominence over the mandatory Validation Notice.

27. The Validation Notice printed on the reverse side of MCM's letter is not prominent or conspicuous and is overshadowed by other messages.

**CLASS ALLEGATIONS**

28. Plaintiff brings this action on her own behalf and on behalf of a Class designated pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure.

29. Plaintiff proposes to define the Class as follows:

- a. All persons with addresses within Philadelphia County, Pennsylvania;
- b. who were sent a two-sided initial letter from Defendant MCM on behalf of Defendant Midland Funding;
- c. attempting to collect a consumer debt alleged due in connection with a Capital One Bank (USA), N.A. account;
- d. which stated "PLEASE SEE REVERSE SIDE FOR IMPORTANT DISCLOSURE INFORMATION" on both sides of the letter, included bold and boxed messages on the front, and listed the validation rights notice in ordinary (i.e. not bold, capitalized, underlined, boxed, or larger) type on the reverse side;
- e. where the letter(s) bears a send date between December 2, 2015 and the date of the filing of this complaint.

30. The Class is believed to be so numerous that joinder of all members is impractical. This Complaint concerns mass-produced form collection letters.

31. There are questions of law or fact common to the Class. These include:

- a. Whether Defendants' form letter violates the Fair Debt Collection Practices Act by failing to provide a clear and prominent Validation Notice as required by §1692g;
- b. Whether the Validation Notice in Defendants' initial communication is overshadowed by other notices and instructions in the letter, in violation of §1692g;
- c. Whether and what amount of statutory damages are recoverable class-wide by Plaintiff and the Class for Midland's violation.

32. Plaintiff's claims are typical of the claims of the Class. Plaintiff and all Class Members were mailed the collection letter for an alleged Capital One Bank (USA), N.A. debt with the same inconspicuously buried Validation Notice. All claims are based on the same factual and legal theories, and there are no individualized issues.

33. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has no interests antagonistic to those of the Class and Plaintiff's counsel is competent and experienced in consumer credit cases and class actions.

34. The questions of law or fact common to the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. The Class Members are consumer debtors, who may be unable to locate or afford to hire lawyers. Most are probably unaware that their rights, and the FDCPA, have been violated.

35. The Class may be certified under Fed. R. Civ. P. 23(b)(3), as such represents a superior method for the fair and efficient adjudication of this controversy in that:

- a. Congress specifically contemplated FDCPA class actions as a principal means of enforcing the statute by private attorneys general. 15 U.S.C. § 1692k.
- b. The interest of Class Members in individually controlling the prosecution of separate claims against debt collectors is small because the maximum statutory damages available in an individual action under the Act is \$1,000.00.
- c. This class action covering consumers within the geographic boundaries of the Philadelphia County is likely to be easily manageable.

- d. The case may require expert testimony, the substantial cost of which may be spread among the Class Members.

**COUNT I – FAIR DEBT COLLECTION PRACTICES ACT**

36. Plaintiff repeats the allegations set forth above as if the same were set forth at length herein.

37. Defendants violated the FDCPA by sending collection letters to Plaintiff and the Class which fails to clearly and prominently provide the mandatory Validation Notice required by 15 U.S.C. § 1692g.

**WHEREFORE**, Plaintiff Shirley Sharpe, on behalf of herself and all others similarly situated, demands judgment against Defendants Midland Credit Management, Inc. and Midland Funding, LLC for:

- (a) Damages;
- (b) Attorney's fees and costs; and
- (c) Such other and further relief as the Court shall deem just and proper.

**V. DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury as to all issues so triable.

Respectfully submitted:

Date: 11/30/16



CARY L. FLITTER  
ANDREW M. MILZ  
**FLITTER MILZ, PC**  
450 N. Narberth Avenue, Suite 101  
Narberth, PA 19072  
(610) 822-0782  
*Attorneys for Plaintiff and the Class*

# **EXHIBIT "A"**

**mcm** Midland Credit Management, Inc.  
2365 Northside Drive, Suite 300, San Diego, CA 92108

008 Shirley D Sharpe  
P8T104 1122 W Master St  
Philadelphia, PA 19122-4114



12-02-2015

Dear Shirley,

Welcome! On 11-18-2015, your Capital One Bank (USA), N.A. account was sold to MIDLAND FUNDING LLC, which is now the sole owner of this debt. Midland Credit Management, Inc. ("MCM"), a debt collection company, will be collecting on, and servicing your account, on behalf of MIDLAND FUNDING LLC.

As a new consumer, we'd like to offer you a 10% discount on the balance. Pay \$600.94 by 01-16-2016 and save \$66.77. Read on and take a minute to get to know us.

**Your experience with MCM will be different. Period.**

**What to expect from MCM:**

Now that we are servicing the account, we have assigned the account an MCM Account Number, 8568156071. MCM will reach out to you by phone and mail over the months to come. We also have a website, [www.midlandcreditonline.com](http://www.midlandcreditonline.com), where you can login using your MCM account number to view account details.

**MCM, a partner you can trust.**

We value your experience and understand that managing debt can be a difficult process! That is why we set standards for how you are to be treated while working with us. Visit [www.midlandcreditonline.com](http://www.midlandcreditonline.com) to learn about our *Consumer Bill of Rights* or call (855) 977-1969 to experience the difference for yourself.

**Next Steps... You Choose.**

**Option 1:** Resolve the account and pay only \$600.94!  
With this option, SAVE \$66.77 if you pay by 01-16-2016.

**Option 2:** Set up a payment plan that works for you.  
Call (855) 977-1969 and speak to a professional Account Manager to set up a plan.

Have a great day and we look forward to hearing from you!

Sincerely,

Christi Weber, Division Manager

P.S. These payment opportunities do not alter or amend your validation rights as described on the reverse side.

This account may still be reported on your credit report as unpaid.

We will not report your debt to the credit bureaus if you set up a payment plan, make a payment by 03-02-2016 and make all payments as agreed.

00149007458

LT1Y

We are not obligated to renew this offer. We will report forgiveness of debt as required by IRS regulations. Reporting is not required every time a debt is canceled or settled, and might not be required in your case.

Hours of Operation:  
M - Th: 8:00am - 8:00pm PST  
Fri: 8:00am - 4:30pm PST  
Sat: 8:00am - 4:30pm PST  
Sun: 8:00am - 8:00pm PST



**Call:**  
(855) 977-1969



**Pay Online at:**  
[www.midlandcreditonline.com](http://www.midlandcreditonline.com)



**Mail:**  
Payment Certificate

**Account at a Glance**

Current Balance: \$667.72	New Consumer Discount Offer: \$600.94	Pay Today and Save: \$66.77
Call: (855) 977-1969	Purchase Date: 11-18-2015	Offer Expiration Date: 01-16-2016

**PLEASE SEE REVERSE SIDE FOR IMPORTANT DISCLOSURE INFORMATION**

**Payment Certificate**

MCM Account Number: 8568156071  
Original Account Number: 3338  
Current Balance: \$667.72  
Due Date: 01-16-2016  
Amount Enclosed: \$

**Directions:**

- 1) Make your check payable to: Midland Credit Management, Inc.
- 2) Fill out the amount enclosed on the Payment Certificate
- 3) Place your check and Payment Certificate in the provided envelope
- 4) Mail Payment Certificate to:



Midland Credit Management, Inc.  
P.O. Box 60578  
Los Angeles, CA 90060-0578

Shirley D Sharpe  
1122 W Master St  
Philadelphia, PA 19122-4114

8568156071

LT1Y



Please understand this is a communication from a debt collector. This is an attempt to collect a debt.  
Any information obtained will be used for that purpose.

**PLEASE SEE REVERSE SIDE FOR IMPORTANT DISCLOSURE INFORMATION**

Calls to and/or from this company may be monitored or recorded.

The records associated with the Capital One Bank (USA), N.A. account purchased by MIDLAND FUNDING LLC, reflect that you are obligated on this account, which is in default.

As the owner of this account, but subject to the rights described below, MIDLAND FUNDING LLC is entitled to payment of this account. All communication regarding this account should be addressed to MCM and not the previous owner.

Unless you notify MCM within thirty (30) days after receiving this notice that you dispute the validity of the debt, or any portion thereof, MCM will assume this debt to be valid.

If you notify MCM, in writing, within thirty (30) days after receiving this notice that the debt, or any portion thereof, is disputed, MCM will obtain verification of the debt or a copy of a judgment (if there is a judgment) and MCM will mail you a copy of such verification or judgment.

If you request, in writing, within thirty (30) days after receiving this notice, MCM will provide you with the name and address of the original creditor.

If an attorney represents you with regard to this debt, please refer this letter to your attorney. Likewise, if you are involved in an active bankruptcy case, or if this debt has been discharged in a bankruptcy case, please refer this letter to your bankruptcy attorney so that we may be notified.

Please remember, even if you make a payment within thirty (30) days after receiving this notice, you still have the remainder of the thirty (30) days to exercise the rights described above.

You are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

**RETAIN THE FOLLOWING ADDRESS INFORMATION FOR YOUR RECORDS:**

Communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to: 2365 Northside Drive, Suite 300, San Diego, CA 92108; Attn: Consumer Support Services.

MAIL PAYMENTS TO: P.O. Box 60578, Los Angeles, CA 90060-0578

MAIL CORRESPONDENCE BUT NO PAYMENTS TO: 2365 Northside Drive, Suite 300, San Diego, CA 92108

MAIL CREDIT REPORTING CORRESPONDENCE TO: MCM CREDIT REPORTING DEPARTMENT, 2365 Northside Drive, Suite 300, San Diego, CA 92108

We are required under state law to notify consumers of the following rights. This list does not contain a complete list of the rights consumers have under state and federal law:

**IF YOU LIVE IN COLORADO, THIS APPLIES TO YOU:**

FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE [WWW.COLORADOATTORNEYGENERAL.GOV/CA](http://WWW.COLORADOATTORNEYGENERAL.GOV/CA)

A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt.

Midland Credit Management has a Colorado office with the following address and telephone number: Building B, 80 Garden Center, Suite 3, Broomfield, CO 80020. Telephone number: (303) 920-4763.

Only physical in-person payments may be accepted at this office location. All payments made via mail should be sent to the following address: P.O. Box 60578, Los Angeles, CA 90060-0578

**IF YOU LIVE IN MASSACHUSETTS, THIS APPLIES TO YOU:**

NOTICE OF IMPORTANT RIGHTS: You have the right to make a written or oral request that telephone calls regarding your debt not be made to you at your place of employment. Any such oral request will be valid for only ten (10) days unless you provide written confirmation of the request postmarked or delivered within seven (7) days of such request. You may terminate this request by writing to Midland Credit Management, Inc.

**IF YOU LIVE IN MINNESOTA, THIS APPLIES TO YOU:**

This collection agency is licensed by the Minnesota Dept. of Commerce.

**IF YOU LIVE IN NEW YORK CITY, THIS APPLIES TO YOU:**

New York City Department of Consumer Affairs License Number 1140603, 1207829, 1207820, 1227728, 2022587, 2023151, 2023152, 2027429, 2027430, 2027431

**IF YOU LIVE IN NORTH CAROLINA, THIS APPLIES TO YOU:**

North Carolina Department of Insurance Permit #101659, #4182, #3777, #111895, and #112039. Midland Credit Management, Inc. 2365 Northside Drive, Suite 300, San Diego, CA 92108.

**IF YOU LIVE IN TENNESSEE, THIS APPLIES TO YOU:**

This collection agency is licensed by the Collection Service Board of the Department of Commerce and Insurance.

**IF YOU LIVE IN CALIFORNIA, THIS APPLIES TO YOU:**

The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or <http://www.ftc.gov>.

"Nonprofit credit counseling services may be available in the area."

As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit-reporting agency if you fail to fulfill the terms of your credit obligations.

**IF YOU LIVE IN UTAH, THIS APPLIES TO YOU:**

As required by Utah law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

**IF YOU LIVE IN WYOMING, THIS APPLIES TO YOU:**

As required by law, you are hereby notified that a negative credit report on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

